

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1179, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 3, between lines 5 and 6, begin a new paragraph and insert:
2 "SECTION 4. IC 24-9-2-9 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. "Home loan" means
4 a loan, other than an open end credit plan, ~~or~~ a reverse mortgage
5 transaction, **or a loan described in IC 24-9-1-1**, that is secured by a
6 mortgage or deed of trust on real estate in Indiana on which there is
7 located or will be located a structure or structures:
8 (1) designed primarily for occupancy of one (1) to four (4)
9 families; and
10 (2) that is or will be occupied by a borrower as the borrower's
11 principal dwelling.
12 SECTION 5. IC 24-9-3-7 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A person may not:
14 (1) divide a loan transaction into separate parts with the intent of
15 evading a provision of this article;
16 (2) structure a home loan transaction as an open-end loan with the
17 intent of evading the provisions of this article if the loan would be
18 a high cost home loan if the home loan had been structured as a
19 closed-end loan; or
20 (3) engage in a deceptive act in connection with a:
21 **(A) home loan; or**

1 **(B) loan described in IC 24-9-1-1.**

2 SECTION 6. IC 24-9-5-1 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A person who
 4 purchases or is otherwise assigned a high cost home loan is subject to
 5 all affirmative claims and any defenses, **except for an affirmative**
 6 **claim or defense pursuant to IC 24-9-3-7**, with respect to the high
 7 cost home loan that the borrower could assert against a creditor or
 8 broker of the high cost home loan. However, this section does not apply
 9 if the purchaser or assignee demonstrates by a preponderance of the
 10 evidence that a reasonable person exercising ordinary due diligence
 11 could not determine that the loan was a high cost home loan. A
 12 purchaser or an assignee is presumed to have exercised reasonable due
 13 diligence if the purchaser or assignee:

14 (1) has in place at the time of the purchase or assignment of the
 15 subject loans, policies that expressly prohibit the purchase or
 16 acceptance of the assignment of any high cost home loans;

17 (2) requires by contract that a seller or an assignor of home loans
 18 to the purchaser or assignee represents and warrants to the
 19 purchaser or assignee that either:

20 (A) the seller or assignor will not sell or reassign any high cost
 21 home loans to the purchaser or assignee; or

22 (B) the seller or assignor is a beneficiary of a representation
 23 and warranty from a previous seller or assignor to that effect;

24 (3) exercises reasonable due diligence:

25 (A) at the time of purchase or assignment of home loans; or

26 (B) within a reasonable period after the purchase or assignment
 27 of home loans;

28 intended by the purchaser or assignee to prevent the purchaser or
 29 assignee from purchasing or taking assignment of any high cost
 30 home loans; or

31 (4) satisfies the requirements of subdivisions (1) and (2) and
 32 establishes that a reasonable person exercising ordinary due
 33 diligence could not determine that the loan was a high cost home
 34 loan based on the:

35 (A) documentation required by the federal Truth in Lending
 36 Act (15 U.S.C. 1601 et seq.); and

37 (B) itemization of the amount financed and other disbursement
 38 disclosures.

(b) A borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of a high cost home loan:

(1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim, after:

(A) an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan is initiated;

(B) an action to collect on the loan or foreclose on the collateral securing the loan is initiated; or

(C) the loan is more than sixty (60) days in default; within three (3) years after the closing of a home loan;

(2) a violation of this article in connection to the high cost home loan as a defense, claim, or counterclaim in an original action within five (5) years after the closing of a high cost home loan; and

(3) any defense, claim, counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan, including a violation of this article after:

(A) an action to collect on the loan or foreclose on the collateral securing the loan is initiated;

(B) the debt arising from the loan is accelerated; or

(C) the loan is more than sixty (60) days in default; at any time during the term of a high cost home loan.

(c) In an action, a claim, or a counterclaim brought under subsection (b), the borrower may recover only amounts required to reduce or extinguish the borrower's liability under a home loan plus amounts required to recover costs, including reasonable attorney's fees.

(d) The provisions of this section are effective notwithstanding any other provision of law. This section shall not be construed to limit the substantive rights, remedies, or procedural rights available to a borrower against any creditor, assignee, or holder under any other law. The rights conferred on borrowers by subsections (a) and (b) are independent of each other and do not limit each other."

Page 3, line 28, delete ",".

Page 3, line 32, delete ",".

Page 20, line 40, after "of" insert "a".

Page 29, between lines 30 and 31, begin a new paragraph and insert:

"SECTION 27. IC 30-2-16 IS ADDED TO THE INDIANA CODE

1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]:

3 **Chapter 16. Payroll Savings Plan Administration**

4 **Sec. 1. As used in this chapter, "participant" means an**
5 **individual who has accumulated a balance of funds with a payroll**
6 **savings plan administrator through a payroll savings plan.**

7 **Sec. 2. As used in this chapter, "payroll savings plan" means a**
8 **method provided by an employer to the employer's employees for**
9 **the voluntary purchase of United States savings bonds on a regular**
10 **schedule through the designation of an amount to be deducted each**
11 **pay period until a sufficient amount accumulates to pay the**
12 **purchase price of at least one (1) United States savings bond.**

13 **Sec. 3. As used in this chapter, "payroll savings plan**
14 **administrator" means an organization that:**

15 **(1) has been qualified by the Federal Reserve Bank or the**
16 **Bureau of the Public Debt under 31 CFR Part 317 to sell**
17 **United States savings bonds; and**

18 **(2) operates payroll savings plans on behalf of employers for**
19 **the purchase of United States savings bonds.**

20 **Sec. 4. As used in this chapter, "static balance" means an**
21 **amount held by a payroll savings plan administrator for a**
22 **participant who:**

23 **(1) is not making allotments of payroll deductions to the**
24 **payroll savings plan administrator; but**

25 **(2) has not terminated the individual's directions to the**
26 **participant's employer or the employer's payroll savings plan**
27 **administrator to purchase United States savings bonds for the**
28 **individual when a sufficient balance accumulates to pay the**
29 **purchase price.**

30 **Sec. 5. Subject to this chapter, a payroll savings plan**
31 **administrator is entitled to reimbursement from a static balance**
32 **for reasonable expenses incurred in the performance of static**
33 **balance administration services beginning with the year after the**
34 **participant ceases to make allotments of payroll deductions to the**
35 **payroll savings plan administrator.**

36 **Sec. 6. Section 5 of this chapter applies only to an account in**
37 **which the static balance does not exceed fifty dollars (\$50).**

38 **Sec. 7. Section 5 of this chapter does not apply to accounts**

1 **containing a static balance that would otherwise be reported to the**
2 **state under IC 32-34-1-26 as Indiana property.**

3 **Sec. 8. The maximum charge that may be imposed on an**
4 **account with a static balance is one dollar (\$1) per month."**

5 Renumber all SECTIONS consecutively.

(Reference is to HB 1179 as printed January 26, 2005.)

and when so amended that said bill do pass.

Committee Vote: Yeas 6, Nays 0.

Paul

Chairperson